



DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2022-0010]

Agency Information Collection Activities; Notice and Request for Comment; Confidential Business Information

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice and request for comments on a reinstatement, without change, of a previously approved collection of information.

SUMMARY: The National Highway Traffic Safety Administration (NHTSA) invites public comments about our intention to request approval from the Office of Management and Budget (OMB) for a reinstatement without change of a previously approved information collection.

Before a Federal agency can collect certain information from the public, it must receive approval from OMB. Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatements of previously approved collections. This notice describes one collection of information for which NHTSA intends to seek OMB approval, relating to confidential business information.

DATES: Comments must be submitted on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit comments to the docket number identified in the heading of this document by any of the following methods:

- Electronic Submissions: Go to the Federal eRulemaking Portal at <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- Fax: (202) 493-2251.

- Mail or Hand Delivery: Docket Management, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Room W12-140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays. To be sure someone is there to help you, please call (202) 366-9322 before coming.

Instructions: All submissions must include the agency name and docket number for this notice. Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. Please see the Privacy Act heading below.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the *Federal Register* published on April 11, 2000 (65 FR 19477-78) or you may visit <https://www.transportation.gov/privacy>.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> or the street address listed above. Follow the online instructions for accessing the dockets via internet.

FOR FURTHER INFORMATION CONTACT: For additional information or access to background documents, contact Dan Rabinovitz in the Office of the Chief Counsel, Daniel.Rabinovitz@dot.gov, National Highway Traffic Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue, SE, Washington, DC 20590. Please identify the relevant collection of information by referring to its title and OMB Control Number (Confidential Business Information, 2127-0025).

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the Federal Register providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each

proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) how to enhance the quality, utility, and clarity of the information to be collected; and (d) how to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. In compliance with these requirements, NHTSA asks for public comments on the following proposed collection of information for which the agency is seeking approval from OMB.

Title: Confidential Business Information

OMB Control Number: 2127-0025

Form Number(s): N/A

Type of Request: Reinstatement without change of a previously approved information collection

Type of Review Requested: Regular

Requested Expiration Date of Approval: 3 years from date of approval

Summary of the Collection of Information:

Persons who submit information to the agency and seek to have the agency withhold some or all of that information from public disclosure, including under the Freedom of Information Act (FOIA), 5 U.S.C. 552, must provide the agency with sufficient support that justifies the confidential treatment of that information. A request for confidential treatment must meet the requirements set forth in 49 CFR Part 512. For example, a request must be submitted to

the Office of the Chief Counsel and include: (1) a letter to the Chief Counsel that contains supporting information to justify a request, per Part 512.8; (2) a certificate in support of a request for confidential treatment, per Part 512.4(b) and Appendix A; (3) the material claimed to include confidential business information—with proper confidential markings, per Part 512.6; and (4) a complete copy of the material—with redactions over the portions for which confidential treatment is claimed (i.e., so it cannot be seen), and the rest of the material unredacted, per Part 512.5(a)(2).

Part 512 helps ensure that information submitted under a claim of confidentiality is properly evaluated under prevailing legal standards and, where appropriate, accorded confidential treatment. The requirements in Part 512 apply to all information submitted to NHTSA, except as provided in section 512.2(b), for which a determination is sought that the material is entitled to confidential treatment under 5 U.S.C. 552(b), most often because it constitutes confidential business information as described in 5 U.S.C. 552(b)(4), and should be withheld from public disclosure. To facilitate the evaluation process, in their requests for confidential treatment, submitters of information may make reference to certain limited classes of information specified in Appendix B that are presumptively treated as confidential, such as blueprints and engineering drawings, future specific model plans (under limited conditions), and future vehicle production or sales figures for specific models (under limited conditions). Additionally, Appendix C's class determinations, which are specific to early warning reporting (EWR) data, grant presumptive confidentiality to certain EWR data, with exceptions including information on death, injury, and property damage claims and notices, which would be handled on an individual basis according to the procedures of Part 512. 72 FR 59434 (Oct. 19, 2007).¹

Description of the Need for the Information and the Proposed or Actual Use of the Information:

¹ The collection of EWR data is covered under OMB Control No. 2127-0616.

NHTSA receives confidential information for use in its activities, which include investigations, rulemaking actions, program planning and management, and program evaluation. The information is needed to ensure the agency has sufficient relevant information for decision-making in connection with these activities. Some of this information is submitted voluntarily, as in rulemaking, and some is submitted in response to compulsory information requests, as in investigations. If Part 512 were not in existence, the agency would still receive this confidential information, either through voluntary submissions or through compulsory submissions in response to agency requests issued pursuant to its information gathering powers. The only difference would be that the determinations of whether the information should be accorded confidential treatment would be less structured and, ultimately, more expensive and time-consuming for both the entities requesting confidentiality and the agency.

Affected Public:

This collection of information applies to entities that submit to the agency information that the entities wish to have withheld from public disclosure, including under FOIA. Thus, the collection of information applies to entities that are subject to laws administered by the agency or agency regulations and are under an obligation to provide information to the agency. It also includes entities that voluntarily submit information to the agency. Such entities would include manufacturers of motor vehicles and of motor vehicle equipment. Importers are considered to be manufacturers. It may also include other entities that are involved with motor vehicles or motor vehicle equipment but are not manufacturers.

Estimated Number of Respondents: 165

Frequency: On occasion.

Estimated Total Annual Burden Hours: 5,575 hours.

Potential submitters of requests for confidential treatment of information include vehicle manufacturers, equipment manufacturers, and registered importers. In recent years, NHTSA has received an average of approximately 500 requests for confidential treatment of information

annually from approximately 75 unique requesters. Last year, however, NHTSA began receiving more requests for confidential treatment after NHTSA issued the Standing General Order 2021-01 (General Order) which requires certain named entities to submit reports on crashes involving ADS or Level 2 ADAS.² As a result, NHTSA estimates it will receive an additional 1,575 requests for confidential treatment each year from an estimated 110 unique respondents, for a total of 2,075 requests from 165 unique respondents (NHTSA estimates that there will be some overlap between respondents submitting requests in connection with General Order reporting and those submitting non-General Order requests). NHTSA estimates that most requests for confidential treatment have come, and will continue to come, from large manufacturers.

The agency receives requests for confidential treatment that vary in size—from requests that ask the agency to withhold as little as a portion of one page to voluminous electronic files. An entity requesting confidential treatment must provide a written statement in support of a request for confidential treatment that explains why the submitted information should be withheld from public disclosure, including the legal basis for withholding, along with a certification. *See* 49 CFR Part 512. In the case of submissions by large manufacturers, which often consist of hundreds of pages of information, it takes, on average, eight hours to prepare a submission. On the other hand, the typical small business that submits a single page document should only need about five (5) minutes to fully comply with the regulation. To estimate the total burden associated with this information collection, NHTSA has used the more conservative estimate that each non-General Order submission will take approximately 8 hours. Therefore, the non-General Order total annual burden is estimated at 4,000 hours (8 hours × 500 requests/year). Additionally, NHTSA estimates that each General Order submission will take

² More information about the General Order is available on NHTSA's website at <https://www.nhtsa.gov/laws-regulations/standing-general-order-crash-reporting-levels-driving-automation-2-5> and in NHTSA's information collection request with OMB control number 2127-0754.

approximately 1 hour.³ Therefore, the General Order total annual burden is estimated at 1,575 hours (1 hour × 1,575 requests/year). Finally, the combined total annual burden is estimated at 5,575 hours for 49 CFR Part 512.

To calculate the labor cost associated with submitting requests for confidential treatment, NHTSA looked at wage estimates for the type of personnel involved with compiling and submitting the documents. NHTSA estimated the total labor costs associated with these burden hours by looking at the average wage for Paralegals and Legal Assistants. The Bureau of Labor Statistics (BLS) estimates that the average hourly wage for Paralegals and Legal Assistants (BLS Occupation code 23-2011) is \$27.22. The Bureau of Labor Statistics estimates that private industry workers' wages represent 70.4% of total labor compensation costs. Therefore, NHTSA estimates the hourly labor costs to be \$38.67 for BLS Occupation code 23-2011. Consequently, NHTSA estimates the total labor cost associated with the 5,575 burden hours to be \$215,585. This estimate was derived by multiplying the estimated annual burden of 5,575 hours with the mean hourly labor cost estimate for Paralegals and Legal Assistants of \$38.67 per hour. Table 1 provides a summary of the estimated burden hours and labor costs associated with those submissions.

Table 1: Burden Estimates

Annual Responses	Estimated Burden Per Response	Average Hourly Labor Cost	Labor Cost Per Submission	Total Burden Hours	Total Labor Costs
2,075	2.687 Hours	\$38.67	\$309.36	5,575	\$215,585

³ NHTSA estimates that requests for confidential treatment pursuant to the General Order will only take 1 hour because NHTSA's online portal for General Order submissions helps automate the process for requests and the General Order only allows entities to request confidential treatment for three (3) fields per incident report. Consequently, the limited General Order requests for confidential treatment are, on average, remarkably smaller than the voluminous non-General Order requests.

Since 49 CFR Part 512 does not require those persons who request confidential treatment to keep copies of records or requests submitted to us, there are no associated recordkeeping burdens.⁴

Estimated Total Annual Burden Cost: \$165.

The only cost to respondents is expected to be postage costs. NHTSA estimates that each mailed response costs \$8.95 (priority flat rate envelope from USPS). Historically, Part 512 requests were submitted by mail. However, at the onset of the COVID-19 public health emergency, NHTSA began accepting Part 512 submissions electronically and requested that submissions not be mailed. NHTSA now estimates that no more than 1% of submissions are submitted by mail. Accordingly, NHTSA estimates the total annual costs for this information collection to be \$186 ($2,075 \text{ submissions} \times .01 \times \$8.95 = \$185.71$, rounded to \$186).

PUBLIC COMMENTS INVITED: You are asked to comment on any aspects of this information collection, including (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (b) the accuracy of the Department's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

AUTHORITY: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; 49 CFR 1.49; and DOT Order 1351.29.

⁴ NHTSA has a separate record retention regulation (49 CFR Part 576) covered by a Paperwork Reduction Act clearance, OMB Control No. 2127-0042.

Ann E. Carlson,
Chief Counsel.
[Billing Code: 4910-59-P]

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